



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

SMC
Docket No: 06377-99
4 May 2000

MS1 [REDACTED] JSN
[REDACTED]

Dear Petty Officer [REDACTED]:

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 4 May 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by the Navy Personnel Command dated 8 March 2000, a copy of which is attached, and the Deputy Assistant Secretary of the Navy (Personnel Programs) memorandum dated 31 August 1999, approving denial of your Complaint of Wrongs under Article 138, Uniform Code of Military Justice. They also considered your letter dated 19 April 2000 with enclosures.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the advisory opinion. They were unable to find the contested evaluation was erroneous in stating you were counseled for "using poor judgment in interactions with subordinate personnel." In any event, they generally do not grant relief on the basis of an alleged absence of counseling, since counseling takes many forms, so the recipient may not recognize it as such when it is provided. The Board likewise was unable to find that your leading chief petty officer, who you allege was caught taking food from the storerooms, was biased against you because you told him you would report it if you saw something illegal. In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure

6377-99



DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

1610
PERS-311
8 MAR 00

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: PERS/BCNR Coordinator (PERS-00ZCB)

Subj: MS [REDACTED] USN, [REDACTED]

Ref: (a) BUPERSINST 1610.10, EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests removal of his performance report for the period 7 January 1998 to 25 June 1998.

2. Based on our review of the material provided, we find the following:

a. A review of the member's digitized record revealed the report in question to be on file. The member signed the report indicating his desire to submit a statement. Per reference (a), Annex S, paragraph S-8, the member has two years from the ending date of the report to submit a statement if desired. PERS-311 has not received a statement from the member.

b. The member requested an Article 138 alleging the performance report in question was unjust and biased. The Commander, Naval Surface Group Pacific Northwest, GCMA, determined that the member's allegations were without merit.

c. The report represents the appraisal responsibility of the reporting senior for a specific period of time. The reporting senior clearly states in the comments portion of the performance report, as well as his endorsement to the member's complaint of wrongs, his reasons for the grades assigned on the report.

d. The marks, comments, and recommendations contained in the report are at the discretion of the reporting senior. They are not routinely open to challenge.

